sense, and that they mean the "construction, repair and maintenance of the project until it shall be turned over to the beneficiaries thereof."

This interpretation would seem proper since, if the cost of maintenance, which is a considerable proportion of the cost of the project, is not paid by the water users, the Reclamation Fund, instead of being a permanent fund, as was intended, will in the course of a few years be entirely destroyed. A. R. G.

Torts—May a Wife Whose Treatment of Her Husband Causes Him to Desert Her Recover Against Third Person Whose False Statements Induced Her to So Treat Him?—The defendant made certain false statements to plaintiff about her husband, which, if true, would justify him in obtaining a divorce. Relying on these statements, plaintiff refused to see or speak with her husband, sent him a letter in which she told him that she would hold no further communication with him, but would sue him for a divorce, and hoped she might never see or speak to him again. The husband took her at her word, left for parts unknown and has not been heard from since. The plaintiff, then discovering that defendant's statements were known by him to be false and were made for the purpose of causing a separation between plaintiff and her husband, sues defendant for the loss of her husband. The Supreme Court holds the above facts state a cause of action.[1]

The decision marks an extension in the field of deceit, being without precedent and almost without analogy. It seems, however, to be included under the head of the wrong which "consists in leading a man into damage by wilfully or recklessly causing him to believe or act on a falsehood."[2] But while defendant has committed a wrong, is plaintiff in a position to claim damages therefor? Was there not a duty on plaintiff to make some inquiry as to the truth of these charges before acting? The California cases have held rather strictly to the rule that plaintiffs must use all reasonable means of knowledge to detect the fraud.[3] Defendant was the husband of plaintiff's aunt, but this created no fiduciary relationship. Can it be the law of California that a wife can separate herself from her husband on her first impulse, relying solely on the statements of a third party? Does she owe no duty to the husband, no duty to society to make some investigation? In the cases relied on by the court, the plaintiff went to the accused party and demanded an explanation. This, at least, should be required.

No demurrer was interposed on the ground of nonjoinder of the husband. Had there been, the plaintiff would have been in this di-

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[1] Work v. Campbell (Dec. 13, 1912), 44 Cal. Dec. 685, 128 Pac. 943.

[2] Pollock on Torts, 8th ed. p. 279; Civil Code of California, Sec. 1709.

[3] Champion v. Wood (1889), 79 Cal. 17, 21 Pac. 534; Simpson v. Dalziel (1902), 135 Cal. 599, 67 Pac. 1080.

lemma: If the husband could be found to join in the action, the chief element of damage would cease; if he could not be found the wife would have no cause of action, the right of action arising after marriage, and being therefore community property and the wife not living apart from her husband owing to his fault.

These difficulties come from regarding a right of action for damages for a personal injury as property and applying the community rules thereto.[4] Such a theory is unsound in principle and unworkable in practice. If the right of action is really community property, the wife should not be a party at all. B. S. C.

Trusts—It is Necessary for the Creditor to First Exhaust His Security Under the Trust Deed?—The distinction which has been attempted to be drawn between dicta and obiter dicta is perhaps not practically useful.[1] But if there ever were an instance of the latter sort of dictum, it is to be found in the late Mr. Justice McFarland's remarks in Herbert Kraft Company v. Bryan,[2] where, in effect, he says that though it is claimed that a creditor who has the security of a trust deed ought to exhaust his security before suing upon the note, it is also claimed that he need not do so. The learned justice, it would seem, himself plainly leaned to the latter opinion, though he expressly declined to decide the point, merely discussing the matter because what was said "may possibly be of some aid in examining the question hereafter." A recent decision[3] uses Justice McFarland's language as an authority to the effect that the holder of a trust deed should exhaust his security before suing for a personal judgment.

We believe that this decision of the intermediate court will not be adopted by the Supreme Court if the question is ever presented there. The decision seems to be without any basis in principle, and had it not been for dicta in two earlier cases,[4]—also purely **obiter,**—the remarks in the Kraft case would, we venture to say, never have been written. The only reason why a mortgagee is obliged to sue to foreclose his mortgage is because the Code of Civil Procedure requires him to do so.[5] Neither the holder of a pledge.[6] nor of a vendor's lien,[7]

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[4] McFadden v. Santa Ana etc. Ry. Co. (1891), 87 Cal. 464, 25 Pac. 681.

[1] Wambaugh: Study of Cases, Sec. 13.

[2] Herbert Kraft Co. v. Bryan (1903), 140 Cal. 73, 73 Pac. 745.

[3] Pitzel v. Maier Brewing Co., 16 Cal. App. Dec. 59 (decided by the Second Appellate District, Dec. 30, 1912).

[4] Savings & Loan Society v. Burnett (1895), 106 Cal. 514. 528, 39 Pac. 922, where it is said that the grantor under a trust deed retains the right to a conveyance on payment "and to a sale as provided in case of default." See also Powell v. Patison (1893), 100 Cal. 236, 239, 44 Pac. 677.

[5] Code of Civil Procedure, Sec. 726.

[6] Ehrlich v. Ewald (1884), 66 Cal. 97.

[7] Samuel v. Allen (1893), 98 Cal. 406, 33 Pac. 203.